

EXHIBIT C

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, MARIA NGUYEN, WILLIAM BYATT, JEREMY DAVIS, and CHRISTOPHER CASTILLO, individually and on behalf of all other similarly situated,

Plaintiffs,

V.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**PLAINTIFF CHASOM BROWN'S OBJECTIONS AND RESPONSES
TO DEFENDANT'S SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to Federal Rule of Civil Procedure Rule 36, Plaintiff Chasom Brown (“Brown”) hereby objects and responds to Defendant’s, Google LLC (“Google”), Second Set of Requests for Admission (Nos. 2–21). These objections and responses are made solely for the purpose of and in relation to this action. In addition, the objections and responses set forth in this document are based on Plaintiff Brown’s knowledge, investigations, and analysis to date. As discovery proceeds, Plaintiff Brown may become aware of additional facts or evidence and his analysis of the case may change. Plaintiff Brown reserves all rights to supplement and amend his objections and responses accordingly.

REQUEST FOR ADMISSION NO. 2:

Admit that, when YOU signed up for YOUR GOOGLE ACCOUNT, YOU indicated to Google that YOU agreed to Google's then-current TERMS OF SERVICE.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Plaintiff Brown objects to this Request as vague and overly broad to the extent Google relies on the undefined, capitalized term “TERMS OF SERVICE,” as Plaintiff Brown cannot be expected to guess or speculate as to which “TERMS OF SERVICE” Google might be referring to in this Request. Plaintiff Brown further objects to this Request to the extent it purports to suggest

1 that review of and consent to Google's Privacy Policy is a necessary predicate for any claim in this
2 litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully
3 intercepting, collecting data from, analyzing, and monetizing Plaintiff Brown's (and class
4 members') browsing activity conducted in private browsing mode, despite Google's
5 representations (including without limitation in the Incognito private browsing mode) that private
6 browsing mode was private and that Plaintiff Brown's (and class members') private browsing
7 information would not be collected by Google. Users did not need any Google account to browse
8 privately, using Incognito mode or otherwise. Further, to the best of Plaintiff Brown's knowledge,
9 he has never logged into any Google accounts in Chrome when using Chrome's private browsing
10 mode.

11 Notwithstanding and subject to these objections, Plaintiff Brown admits that, at or around
12 the time he opened his Google Account and at times thereafter, he reviewed Google's
13 representations that he was in "control" of what information Google collects and could exercise
14 such control by enabling private browsing mode, such as the representations outlined in paragraphs
15 2 and 42 of the First Amended Complaint, which made clear that he was in "control" of what
16 information Google collects. He understands this, along with the Chrome Incognito Notice (i.e.,
17 the Incognito splash screen that he reviewed each time he began a private browsing mode session
18 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
19 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
20 Complaint. Otherwise Denied.

21 **REQUEST FOR ADMISSION NO. 3:**

22 Admit that YOU reviewed the GOOGLE PRIVACY POLICY before you first used
23 INCOGNITO MODE.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

25 Plaintiff Brown objects to this Request as vague and overly broad to the extent Google has
26 defined the GOOGLE PRIVACY POLICY to include the policy available at
27 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Brown further
28

1 objects to this Request to the extent it purports to suggest that review of and consent to Google's
2 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Brown's allegations
3 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
4 and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private
5 browsing mode, despite Google's representations (including without limitation in the Incognito
6 private browsing mode) that private browsing mode was private and that Plaintiff Brown's (and
7 class members') private browsing information would not be collected by Google. Users did not
8 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
9 best of Plaintiff Brown's knowledge, he has never logged into any Google accounts in Chrome
10 when using Chrome's private browsing mode.

11 Notwithstanding and subject to these objections, Plaintiff Brown admits that, at or around
12 the time he opened his Google Account and at times thereafter, he reviewed Google representations
13 that he was in "control" of what information Google collects and could exercise such control by
14 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
15 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
16 the Incognito splash screen that he reviewed each time he began a private browsing mode session
17 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
18 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
19 Complaint. Otherwise Denied.

20 **REQUEST FOR ADMISSION NO. 4:**

21 Admit that YOU have never indicated to Google that YOU did not agree to the GOOGLE
22 PRIVACY POLICY.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

24 Plaintiff Brown objects to this Request as vague and overly broad to the extent Google has
25 defined the GOOGLE PRIVACY POLICY to include the policy available at
26 <https://policies.google.com/privacy> "and any prior version of this policy." Plaintiff Brown further
27 objects to this Request to the extent it purports to suggest that review of and consent to Google's
28

1 Privacy Policy is a necessary predicate for any claim in this litigation. Plaintiff Brown's allegations
2 relate to Google's conduct of secretly and unlawfully intercepting, collecting data from, analyzing,
3 and monetizing Plaintiff Brown's (and class members') browsing activity conducted in private
4 browsing mode, despite Google's representations (including without limitation in the Incognito
5 private browsing mode) that private browsing mode was private and that Plaintiff Brown's (and
6 class members') private browsing information would not be collected by Google. Users did not
7 need any Google account to browse privately, using Incognito mode or otherwise. Further, to the
8 best of Plaintiff Brown's knowledge, he has never logged into any Google accounts in Chrome
9 when using Chrome's private browsing mode.

10 Notwithstanding and subject to these objections, Plaintiff Brown admits that, at or around
11 the time he opened his Google Account and at times thereafter, he reviewed Google representations
12 that he was in "control" of what information Google collects and could exercise such control by
13 enabling private browsing mode, such as the representations outlined in paragraphs 2 and 42 of
14 the First Amended Complaint. He understands this, along with the Chrome Incognito Notice (i.e.,
15 the Incognito splash screen that he reviewed each time he began a private browsing mode session
16 in Chrome), to be the Google Privacy Policy. To the extent Google's defined "Google Privacy
17 Policy" is applicable, it did not provide consent to Google's conduct alleged in the First Amended
18 Complaint. Otherwise Denied.

19 **REQUEST FOR ADMISSION NO. 5:**

20 Admit that the GOOGLE PRIVACY POLICY discloses that Google collects through its
21 SERVICES the categories of Data that YOUR FAC alleges Google illegally "intercepted." *See,*
22 *e.g.*, FAC ¶¶ 202-17.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

24 Denied.

25 **REQUEST FOR ADMISSION NO. 6:**

26 Admit that each GOOGLE PRIVACY POLICY YOU reviewed disclosed that Google
27 collects information about users' visits to websites that use Google's services.
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

2 Denied.

3 **REQUEST FOR ADMISSION NO. 7:**

4 Admit that the GOOGLE PRIVACY POLICY does not represent that using private
5 browsing mode will prevent Google from receiving information through its SERVICES.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

7 Denied.

8 **REQUEST FOR ADMISSION NO. 8:**

9 Admit that, during the CLASS PERIOD, YOU were aware that “Google collects
10 information about the web-browsing activity of users who are not in ‘private browsing mode.’”

11 *See FAC ¶ 163.*

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

13 Plaintiff Brown admits that he was aware that Google was online collecting data
14 sometimes, when he was not browsing in private mode, but did not understand exactly how.
15 Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 9:**

17 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
18 aware that the websites may record data associated with your visit (for example, on the websites’
19 servers), including the webpages YOU viewed.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

21 Denied.

22 **REQUEST FOR ADMISSION NO. 10:**

23 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
24 aware that your alleged COMMUNICATIONS with the websites might be recorded by the
25 websites (for example, on the websites’ servers).

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

27 Denied.

1 **REQUEST FOR ADMISSION NO. 11:**

2 Admit that, when YOU visited websites using Chrome in Incognito mode, YOU were
3 aware that your alleged COMMUNICATIONS with the websites might be visible to YOUR
4 internet service provider.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

6 Denied.

7 **REQUEST FOR ADMISSION NO. 12:**

8 Admit that, during the CLASS PERIOD, you understood the terms “private browsing” and
9 “browse privately” in the Google disclosures that YOU allege YOU reviewed did not mean that
10 your internet browsing activity would be completely private from everyone.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

12 Plaintiff Brown admits that, when he visited websites using Chrome in Incognito mode,
13 his activity might still be visible to those websites, his employer or school, and/or his internet
14 service provider. Plaintiff Brown did not, however, consent to Google’s interception of that
15 activity. Otherwise denied.

16 **REQUEST FOR ADMISSION NO. 13:**

17 Admit that when YOU browsed the web in Incognito mode, YOU understood that cookies
18 could still be placed on YOUR browser and would be deleted when YOU closed YOUR Incognito
19 window or tab.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

21 Denied.

22 **REQUEST FOR ADMISSION NO. 14:**

23 Admit that, when YOU browsed the web in Incognito mode, YOU understood that YOUR
24 activity might still be visible to the websites YOU visited and YOUR internet service provider.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

26 Plaintiff Brown admits that, when he visited websites using Chrome in Incognito mode,
27 his activity might still be visible to those websites. Plaintiff Brown further admits that, when he

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1 visited websites using Chrome in Incognito mode, his activity might still be visible to his internet
2 service provider. Plaintiff Brown did not, however, consent to Google's interception of that
3 activity. Otherwise Denied.
4

5 **REQUEST FOR ADMISSION NO. 15:**

6 Admit that the INCOGNITO NOTICE does not represent that Incognito mode prevents
7 Google from collecting the information that you allege Google illegally "intercepted."
8

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

10 Denied.
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12 **REQUEST FOR ADMISSION NO. 16:**

13 Admit that YOU became "aware that [YOU are] able to sell [YOUR] own personal data,
14 via other websites such as Killi," *see* FAC ¶¶ 170, 175, 180, 185, 190, only after YOU retained
15 YOUR counsel in this action.
16

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

18 Denied.
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20 **REQUEST FOR ADMISSION NO. 17:**

21 Admit that Google's alleged conduct has not affected YOUR alleged ability "to sell
22 [YOUR] own personal data, via other websites such as Killi." *See* FAC ¶¶ 170, 175, 180, 185, 190.
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24 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

25 Denied.
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27 **REQUEST FOR ADMISSION NO. 18:**

28 Admit that YOU did not download and install Google's Analytics Opt-Out Browser Add-
on available at <https://tools.google.com/dlpage/gaoptout>.
29

30 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

31 Plaintiff Brown objects to this Request to the extent it purports to suggest that either
32 downloading and/or installing Google's Analytics Opt-Out Browser Add-on is a necessary
33 predicate for any claim in this litigation. Plaintiff Brown's allegations relate to Google's conduct
34 of secretly and unlawfully intercepting, collecting data from, analyzing, and monetizing Plaintiff
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1 Brown's (and class members') browsing activity conducted in private browsing mode, despite
2 Google's representations (including without limitation in the Incognito private browsing mode)
3 that private browsing mode was private and that Plaintiff Brown's (and class members') private
4 browsing information would not be collected by Google. Users did not need to download and/or
5 install Google's Analytics Opt-Out Browser to browse privately, using Incognito mode or
6 otherwise.

7 Notwithstanding and subject to these objections, Plaintiff Brown admits that he did not
8 download or install Google's Analytics Opt-Out Browser Add-on, but this did not provide consent
9 to Google's conduct alleged in the First Amended Complaint. Otherwise denied.

10 **REQUEST FOR ADMISSION NO. 19:**

11 Admit that YOU did not change the default cookie settings on your browser.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

13 Plaintiff Brown objects to this Request to the extent it purports to suggest that review of
14 changing the "default cookie settings" on the browser is a necessary predicate for any claim in this
15 litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully
16 intercepting, collecting data from, analyzing, and monetizing Plaintiff Brown's (and class
17 members') browsing activity conducted in private browsing mode, despite Google's
18 representations (including without limitation in the Incognito private browsing mode) that private
19 browsing mode was private and that Plaintiff Brown's (and class members') private browsing
20 information would not be collected by Google. Users did not need to change the "default cookie
21 settings" on their browser to browse privately, using Incognito mode or otherwise.

22 Notwithstanding and subject to these objections, Plaintiff Brown admits that he did not
23 change the "default cookie settings" on his browser, but this did not provide consent to Google's
24 conduct alleged in the First Amended Complaint. Otherwise denied.

25 **REQUEST FOR ADMISSION NO. 20:**

26 Admit that YOU did not opt out of ad personalization at <https://adssettings.google.com>.

27 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

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1 Plaintiff Brown objects to this Request to the extent it purports to suggest that opting out
2 of ad personalization at <https://adssettings.google.com> is a necessary predicate for any claim in
3 this litigation. Plaintiff Brown's allegations relate to Google's conduct of secretly and unlawfully
4 intercepting, collecting data from, analyzing, and monetizing Plaintiff Brown's (and class
5 members') browsing activity conducted in private browsing mode, despite Google's
6 representations (including without limitation in the Incognito private browsing mode) that private
7 browsing mode was private and that Plaintiff Brown's (and class members') private browsing
8 information would not be collected by Google. Users did not need to opt out of ad personalization
9 at <https://adssettings.google.com> to browse privately, using Incognito mode or otherwise.

10 Notwithstanding and subject to these objections, Plaintiff Brown admits that he did not opt
11 out of ad personalization at <https://adssettings.google.com>, but this did not provide consent to
12 Google's conduct alleged in the First Amended Complaint. Otherwise denied.

13 **REQUEST FOR ADMISSION NO. 21:**

14 Admit that YOU did not retain any information identifying the cookies Google allegedly
15 set on your browser while YOU were private browsing.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

17 While browsing privately, Plaintiff Brown admits that he was not aware that Google was
18 placing cookies on his browser, therefore Plaintiff Brown could not have retained any information
19 identifying the cookies Google placed. Plaintiff Brown's claims are about Google Analytics. Any
20 cookie data that is collected by Google would be in Google's possession, and not on Plaintiff
21 Brown's devices. Regardless, Google has yet to disclose to Plaintiff Brown how exactly it is
22 collecting and using Plaintiff Brown's data in private browsing. Otherwise denied.

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1 Dated: February 16, 2021

MORGAN & MORGAN

2 /s/ John A. Yanchunis

3 John A. Yanchunis (*pro hac vice*)
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27
28 *Attorneys for Plaintiffs*

PROOF OF SERVICE

I, Jennifer Cabezas, declare:

I am a citizen of the United States and employed in the County of Hillsborough, Florida. I am over the age of 18 and not a party to the within action; my business address is 201 N. Franklin St., 7th Floor, Tampa, FL 33602.

On February 16, 2021, I served the following document described as:

**Plaintiff's Objections and Responses to Defendant's Second Set of Requests for
Admission**

By electronic mail transmission from [jcabezas@forthepeople.com](mailto:jcabEZAS@forthepeople.com) on February 16, 2021, by transmitting a PDF format copy of such document to each person at the e-mail addresses listed below. The document was transmitted by electronic transmission and such transmission was reported as complete and without error:

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17 *Attorneys for Defendant*

18 Executed on February 16, 2021, at Tampa, Florida.

19
20 /s/ Jennifer Cabezas
Jennifer Cabezas

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